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266 NLRB No. 29

D--9697
Masontown, PA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

L & J EQUIPMENT COMPANY, INC.

and

Case 6--CA--15662

UNITED MINE WORKERS OF AMERICA

DECISION AND ORDER

Upon a charge filed on July 23, 1982, by United Mine Workers of America, herein called the Union, and duly served on L & J Equipment Company, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 6, issued a complaint on September 10, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on April 16, 1982, following a Board election in Case 6--RC--9124, the Union was duly certified as the

exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about May 11, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so, and commencing on or about July 18, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain with the Union by refusing to provide information requested by the Union. Thereafter, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On October 1, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Thereafter, Respondent filed an opposition to the General Counsel's motion. Subsequently, on October 8, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent filed a response to the Notice To Show Cause on October 20, 1982.

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[1] Official notice is taken of the record in the representation proceeding, Case 6--RC--9124, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, its opposition to the Motion for Summary Judgment, and its response to the Notice To Show Cause, Respondent admits the requests and its refusals to bargain with the Union. It, however, challenges the Union's certification, reiterating its contentions in the underlying representation proceeding that the Acting Regional Director improperly overruled certain of Respondent's objections to the election.

Review of the record herein, including the record in Case 6--RC--9124, reveals that on September 1, 1981, the Union filed a representation petition under Section 9 of the National Labor Relations Act, as amended. On October 8, 1981, the Regional Director issued a Decision and Direction of Election pursuant to which an election was conducted on November 4, 1981. The tally was 39 votes for, and 33 against, the Union, with 11 challenged ballots, a number sufficient to affect the results of the election. Thereafter, Respondent filed timely objections to the election, alleging in substance that: (1) the Union, through its officials as well as its inplant organizing committee, had threatened employees with reprisals if the Union lost the

election and if employees crossed a picket line during a subsequent strike; (2) that these threats, along with threats made by nonemployees, and the burning of an employee's company truck and of Respondent's hay barn, had created an atmosphere of fear and confusion sufficient to destroy the ''laboratory conditions'' of the election; (3) that the Union, through a former employee member of the inplant organizing committee, had engaged in sustained electioneering among employees while they waited in line to vote; (4) that the Union had misrepresented its strike benefits policy; (5) that the Union had promised to sponsor and pay for a dinner dance for all employees if it won the election, and (6) that the Board agent improperly had voided a ballot because it contained the additional markings ''KKK.''

On January 15, 1982, the Acting Regional Director ordered a hearing on Respondent's objections and six of the challenges.[2] The Hearing Officer issued his report on March 5, 1982, in which he recommended that the challenges to the ballots of the six individuals be sustained, that all, save one, of Respondent's objections be overruled, and that the election be set aside based on the Union's promised postelection victory dinner dance. Respondent and the Union filed timely exceptions to the Hearing Officer's report. On April 16, 1982, the Acting Regional Director

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[2] The hearing on the remaining five challenged ballots was consolidated with a related unfair labor practice proceeding in which the individuals whose ballots had been challenged were alleged discriminatees. In view of the subsequent sustaining of the six challenges to ballots by the Acting Regional Director, however, these remaining five challenged ballots were no longer determinative of the election.

issued a supplemental decision on the objections and challenged ballots and a Certification of Representative in which he adopted the Hearing Officer's report except for the recommendation that the election be set aside based on the Union's promise of a dinner dance. The Acting Regional Director, therefore, certified the Union as the bargaining representative of the employees. Thereafter, Respondent filed a request for review of the Acting Regional Director's overruling of its objections in his Supplemental Decision. The request for review was denied by the Board on August 4, 1982. It thus appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding,[4] and Respondent does not offer to adduce at a hearing

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[3] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[4] In its answer, Respondent also denied the complaint allegation concerning the appropriateness of the unit for which the Union is the certified bargaining representative. The unit alleged in the complaint, however, was found to be appropriate by the Regional Director in his Decision and Direction of Election issued October 8, 1981. Respondent did not request the Board to review the Regional Director's decision. As this matter could have been raised in the representation (continued)

any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

In its answer to the complaint, Respondent also admits that it has refused to furnish the Union with the requested information, but again defends its refusal to furnish such information on the grounds that the Union's certification is improper. For the above-stated reasons, we find such a defense without merit. Respondent further denies that this information is necessary for, and relevant to, the Union's performance of its function as the exclusive bargaining representative of the employees in the unit. By letter dated June 18, 1982, the Union requested a list of unit employees, wage rates, benefits, dates of hire, a copy of the grievance procedure, and related information.[5]

It is well established that such information is presumptively relevant for purposes of collective bargaining and

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[4] proceeding, it is not properly litigable in this unfair labor practice proceeding. Thus, we find that no material issue of fact exists with regard to the appropriateness of the unit.

[5] More specifically, the Union requested an updated list of bargaining unit employees' first and last names and their addresses; the classification, wage rate, shift, and date of hire of all bargaining unit employees; a list of all current benefits, including shift differential, sick leave, holidays, vacations scheduled, etc.; a copy of the pension plan and the monthly dollar contribution made on behalf of each employee; a copy of the health insurance plan and a copy of the monthly employee premium and a copy of the grievance procedure.

must be furnished upon request.[6] Furthermore, Respondent has not attempted to rebut the relevance of the information requested by the Union. Accordingly, we find no material issues of fact exist with regard to Respondent's refusal to furnish the information sought by the Union in its letter of June 18, 1982. Therefore, we grant the Motion for Summary Judgment on all respects.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

L & J Equipment Co., Inc., a Pennsylvania corporation, with its principal office and place of business located in Masontown, Pennsylvania, is engaged in the surface mining of coal. During the 12-month period ending July 31, 1982, it purchased and received goods, services, and materials valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

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[6] Verona Dyestuff Division Mobay Chemical Corporation, 233 NLRB 109, 110, fn. 5 (1977).

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees employed by the Employer at its Hatfield, Pennsylvania, and satellite jobsites; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

2. The certification

On November 4, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 6, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on April 16, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

On or about May 11, 1982, and on or about July 9, 1982, the Union requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about May 11, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and

bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since on or about May 11, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

C. The Request for Information and Respondent's Refusal To Furnish It

On or about June 18, 1982, and on or about July 9, 1982, the Union requested Respondent to provide it with a list of the unit employees, wage rates, benefits, dates of hire, a copy of the grievance procedure, and related information. Commencing on or about July 18, 1982, Respondent has refused, and continues to refuse, to provide the Union with the requested information.

Accordingly, we find that Respondent has refused to furnish the Union with information relating to the employment conditions and wages of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several

States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order that Respondent, upon request, furnish the Union with the information requested by it in its letter of June 18, 1982.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. L & J Equipment Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time employees employed by the Employer at its Hatfield, Pennsylvania, and satellite jobsites; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since April 16, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about May 11, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about July 18, 1982, and all times thereafter, to furnish the Union with a list of the unit employees, wage rates, benefits, dates of hire, a copy of the grievance procedure, and related information as requested by the Union in its letter of June 18, 1982, Respondent has engaged in

and is enaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, L & J Equipment Co., Inc., Masontown, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Mine Workers of America as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time employees employed by the Employer at its Hatfield, Pennsylvania, and satellite jobsites; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Refusing to bargain collectively with the above-named labor organization by refusing to furnish said labor organization

with the information requested by it in the Union's letter of June 18, 1982, including a list of the unit employees, wage rates, benefits, dates of hire, a copy of the grievance procedure, and related information.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, furnish the above-named labor organization with the information requested in its letter of June 18, 1982, including a list of the unit employees, wage rates, benefits, dates of hire, a copy of the grievance procedure, and related information.

(c) Post at its Masontown, Pennsylvania, offices and its Hatfield, Pennsylvania, and satellite jobsites copies of the attached notice marked ''Appendix.''[7] Copies of said notice, on

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[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. February 9, 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Mine Workers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to bargain collectively with the above-named labor organization by refusing to furnish it with the information it requested in its letter of June 18, 1982, including a list of unit employees, wage rates, benefits, a copy of the grievance procedure, and related information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time employees employed by the Employer at its Hatfield, Pennsylvania, and satellite jobsites; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

WE WILL, upon request, furnish the above-named labor organization with the information requested by it in its letter of June 18, 1982, including a list of unit employees, wage rates, benefits, a copy of the grievance procedure, and related information.

L & J EQUIPMENT COMPANY, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1501 William S. Moorehead Federal Office Building, Room 1501, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Telephone 412--644--2969.